IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

(1) D.B. CIVIL SPECIAL APPEAL (W) NO.298/2004.
Legal Representatives of Deceased Mawji & Anr.
Vs.
Board of Revenue & Ors.

(2) D.B. CIVIL SPECIAL APPEAL (W) NO.297/2004.
Legal Representatives of Deceased Mawji & Anr.
Vs.
Board of Revenue & Ors.

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D.B.SPECIAL APPEALS UNDER SECTION 18 OF THE RAJASTHAN HIGH COURT ORDINANCE, 1949.

DATE OF ORDER : 02nd MAY, 2005.

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK LALL MOHTA

Mr.Arvind Samdariya, for the appellants.
Mr.T.Gupta }
Mr.Usman Gani } for the respondents.

BY THE COURT: (PER HON'BLE MATHUR,J.)

1. These two special appeals are directed against the order of the learned Single Judge dated 15.07.2002, dismissing the writ petitions.

2. The relevant facts giving rise to the instant special appeals are that the respondents Ganga and Vela were allotted 5 bighas

of land in Khasra No.806 in village Kherwara on 21.06.1984 under the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1970 (hereinafter referred to as 'the Rules of 1970'). It is claimed by the respondents that the allotment was not under the Rules of 1970 but under the Rajasthan Land Revenue (Allotment of Unculturable Waste Land for Development of Private Forest) Rules, 1983. However, the mutation of the subject land was sanctioned in the name of allottees as late as on 06.08.1993. The appellants are the legal heirs of deceased Mawaji.

3. An application under Section 14(4) of the Rules of 1970 was filed for cancellation of the allotment in favour of the respondents Ganga and Vela in the court of SDM. The deceased Vela set up the case stating inter alia that he was a land less person belonging to the Scheduled Tribe. He was in cultivatory possession of the subject land for last more than 25 years. He came to know about the allotment of land on 31.01.1994, when respondent No.5 arrived on the land to dispossess him**.** On his discloser he came to know about the allotment of this land. On inquiry it further revealed that the mutation was also made in his favour on 05.08.1993. The deceased Mawji took stand that had there been any proclamation as required under the Rules, he could have raised the objection. He could also claim allotment on

priority being a person of Scheduled Tribe and an ex service man. The matter was heard by the Additional District Collector, Udaipur. He found that in absence of proclamation the allotment was illegal. Accordingly, the allotment was cancelled by order of the Additional District Collector dated 07.02.1995. The Revenue Appellate Authority confirmed the order in appeal. In second appeal a copy of the proclamation was filed alongwith an application under Order 41 Rule 27 C.P.C. On the basis of the said document the Board of Revenue allowed the second appeal and set aside the orders of the Revenue Appellate Authority as well as the Additional District Collector. The learned Single Judge has refused to interfere with the order of the Board of Revenue.

4. It is submitted by the learned counsel that the learned Single Judge having held that the application under Order 41 Rule 27 CPC should have been decided by the Board of Revenue prior to the decision of the appeal on merits, committed error in not remitting the matter for fresh decision after giving opportunity to contest the application for production of additional document. On the other hand, it is submitted by Mr.T.Gupta learned counsel for the contesting respondents that there is no reason to doubt genuineness of the document produced before the Board of Revenue, as such, no useful purpose is going to be served by remitting the matter to Board of Revenue.

5. Before we embark upon the consideration of the rival contentions, we may briefly refer to the provisions of the Rules of 1970. Under the said Rules the allotment of unoccupied government land for agricultural purposes in the area other than though declared as colony and other than the land falling in the area mentioned in Section 15 of the Rajasthan Tenancy Act can be alloted. Rule 4 deals with the land which as per Rule 5, the Tehsildar is required to prepare and submit the concerned SDO, a list of unoccupied land. Rule 7 makes it clear that the SDO is required to issue proclamation in form second in the manner laid down under Section 61 of the Act and is required to invite application from the land-less persons for allotment of the land for agricultural purposes. The period of 15 days is required to be given in proclamation. However, the SDO, is authorized to entertain the application even after 15 days. The applications for allotment are required to be placed before the advisory committee constituted for the purpose. All the applications are required to be submitted as a plaint under CPC. The SDO is required to inquire about the entires made in the applications with regard to the eligibility of the applicants. The applications are also to be arranged categorically-wise. The criteria for the categories has been given in Rules.

6. From the perusal of the Rules, it emerges that the issuance

of proclamation for deciding the applications for allotment is a condition precedent. In the instant case the ADM as well as the Revenue Appellate Authority did not find the copy of the proclamation on record. However, in a second appeal a copy of it was placed before the Board of Revenue along with an application under Order 41 Rule 27 CPC. The Board of Revenue proceeded to decided the second appeal without adjudication of an application under Order 41 Rule 27 CPC. The basic principle of admission of additional evidence is that the person seeking such admission should establish that with the best efforts such additional evidence could not have been adduced at the first instance. Secondly the party affected by the admission of additional evidence should have an opportunity to rebut such additional evidence. The reference may made to decision of the Apex Court in Shivajirao Nilangekar Patil vs. Dr. Mahesh Madhav Gosavi & Ors., reported in AIR 1987 SC 294. In the instant case there is no reason recorded by the Board of Revenue for permitting the additional evidence under Order 41 Rule 27 CPC. In fact the production of the proclamation goes to the root of the case. The record which was placed before the ADM, copy of the proclamation was not available. In these circumstances the question of proclamation of additional evidence is required to be adjudicated by the court at the first instance. Thus, in order to secure the ends of justice, we consider it appropriate to remit

the matter down below to first court i.e. ADM, Udaipur.

7. Consequently, both the special appeals are allowed. The order of the learned Single Judge dated 15th July, 2002 is set aside. The writ petitions are allowed. The orders of the revenue appellate authority as well as the ADM, Udaipur are set aside. The application filed before the Board of Revenue under Order 41 Rule 27 CPC shall be treated as an application for production of documents before the ADM, Udaipur under the appropriate provisions of law. The ADM, Udaipur will pass a fresh order after holding inquiry which he considers appropriate in the facts and circumstances of the case and giving opportunity of hearing to the parties.

(MANAK MOHTA),J. **(N.N.MATHUR),J.**

Ashwini/-